

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

FILED

MAR 28 2016

JULIE RICHARDS JOHNSTON, CLERK  
US DISTRICT COURT, EDNC  
BY                      DEP CLK

NO. 5:16-MJ-1087-RN

IN THE MATTER OF THE )  
APPLICATION OF THE UNITED )  
STATES OF AMERICA FOR USE OF A )  
CELL SITE SIMULATOR TO LOCATE )  
THE CELLULAR DEVICE ASSIGNED )  
CALL NUMBER (919) 491-7750, )  
WITH INTERNATIONAL MOBILE )  
SUBSCRIBER IDENTITY )  
310410785849154 )

MOTION TO DELAY NOTICE  
(UNDER SEAL)

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby respectfully moves the Court, pursuant to Title 18, United States Code, Section 3103a(c), to delay notice to the person whose cellular telephone was located in the above-captioned matter, and other such parties, for the following good cause:

1. On January 27, 2016, the Honorable Robert T. Numbers, II, United States Magistrate Judge, authorized a search warrant for the use of a cell site simulator to locate a cellular device assigned call number (919) 491-7750, with International Mobile Subscriber Identity (IMSI) 310410785849154 (hereinafter the "Target Telephone,") for a period of thirty (30) days in furtherance of a criminal investigation into the commission of violations of Title 21, United States Code, Sections 841 and 846,

distribution of narcotics and conspiracy to distribute narcotics, respectively, by Maurio Mitchell, Mark Daye, and other members of the Mitchell Drug Trafficking Organization (DTO). This search warrant expired on February 26, 2016,<sup>1</sup> and any motion to extend delayed notice must be filed by March 28, 2016.<sup>2</sup>

2. The investigation by the Federal Bureau of Investigation (FBI) into both known and unknown individuals involved in the above referenced conspiracy is still ongoing. Currently, the Government is conducting a Title III wiretap authorized by the Honorable James C. Dever, III, Chief United States District Judge, in 5:16-MJ-1182-D and 5:16-MJ-1198-D, of two cellular telephones known to be used by Maurio Mitchell in furtherance of the narcotics conspiracy that formed the basis for the above-captioned search warrant. Maurio Mitchell, the known user of the Target Telephone in the above-captioned matter is a target interceptee on both Title III wiretaps, and has been intercepted over a previous wire using the Target Telephone.<sup>3</sup>

3. The investigation into the Mitchell DTO has revealed that Mark Daye travels to California to broker the purchase of

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<sup>1</sup> This search warrant was not actually executed to locate the Target Telephone. Nevertheless, the Government interprets the statute to require notice of the approval of such process, thereby necessitating the delayed notice extension requested herein.

<sup>2</sup> Delayed notice expired on March 27, 2016; however, because that day fell on a Sunday, "the period continues to run until the end of the next day that is not a ... Sunday." Fed. R. Crim. P. 45(a)(C).

<sup>3</sup> The Government was also authorized to conduct a Title III wiretap in 5:16-MJ-1052-D; however, that period of interception has ended.

narcotics and returns to North Carolina to help Mitchell receive and distribute them. The Government anticipates that the current Title III wiretaps will allow the FBI to intercept additional shipments of narcotics in the coming weeks and months, in furtherance of the investigation into the Mitchell DTO.

4. It is also anticipated that the Government will soon apply for a wiretap of the cellular telephone known to be used by Mark Daye, so as to more fully capture the content of the conversations between Mark Daye and the sources of supply in California and elsewhere. These conversations have not been able to be captured over the wiretap of Maurio Mitchell's telephones.

5. Because the Title III wiretaps of Maurio Mitchell's telephones and the search warrant in the above-captioned matter are so closely intertwined, service of notice at this time could adversely affect law enforcement officers' abilities to effectively continue their investigation, could result in the flight of known and unknown individuals as well as those targeted for investigation prior to the issuance of any future indictment(s), could result in destruction or tampering with evidence, or could endanger the life or physical safety of individuals related to this investigation. See 18 U.S.C. § 3103a(b)(1), incorporating 18 U.S.C. § 2705(a)(B)(2).

6. Pursuant to Title 18, United States Code, Section 3103(a)(c), the Government may move to extend the period of delayed notice "for good cause shown, subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay should be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay."

7. The period of delayed notice in Title III wiretap 5:16-MJ-1198-D is set to expire on July 9, 2016. Giving notice of the above-captioned search warrant before that time would have the aforementioned adverse effects upon that wiretap and any other potential wiretap that the Government will apply for with respect to Mark Daye. For that reason, the Government respectfully requests an extension of delayed notice in this matter beyond the 90 days<sup>4</sup> contemplated in 18 U.S.C. § 3103a(c) because the facts of this case justify a longer delay. Here, the Government requests to delay notice for the above-captioned matter until the conclusion of the delayed notice period for the Title III wiretap in 5:16-MJ-1198-D. This will also serve to keep the delayed notice provisions for all electronic surveillance warrants<sup>5</sup> in this investigation on the same track,

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<sup>4</sup> In this case, 90 days would be June 25, 2016.

<sup>5</sup> To date, in this investigation the Government has sought electronic surveillance warrants in 5:15-MJ-2101-JG, 5:16-MJ-1090-RN (renewed by JEG),

which is necessary because the warrants are so intertwined that delaying notice of each piece of electronic surveillance process in this case serves the same purpose—to protect the ongoing Title III wiretap investigation into the Mitchell DTO.

WHEREFORE, it is respectfully requested that the Court delay notice to the person whose cellular telephone was located in the above-captioned matter, and other such parties, until July 9, 2016.

Respectfully submitted this 28th day of March, 2016.

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5:16-MJ-1089-RN, 5:16-MJ-1088-RN, and 5:16-MJ-1087-RN; and Title III wiretaps in 5:16-MJ-1052-D, 5:16-MJ-1182-D, and 5:16-MJ-1198-D.